



**Attachment D**  
**History of the Development of the Proposed Guidelines**  
**For the Regulation of Sand and Gravel Mining**

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### **History of the Development of the Proposed Guidelines For the Regulation of Sand and Gravel Mining**

**August 1972** First passage and implementation of the *Land Reclamation Act* to regulate all industrial minerals including sand and gravel mining from rivers and streams.

**August 1990** The Missouri Land Reclamation Act was amended. The Missouri permit fee for small operators was set at \$100.

**August 1993** The U.S. Army Corps of Engineers (CE) and the Environmental Protection Agency (EPA) issued final regulations to regulate the discharge incidental to excavation activities (Tulloch Rule). This was issued in response to the 1990 suit by the National Wildlife Federation and required the regulation of material that fell off the edge of a bucket used to excavate material.

**December 1993** The first interagency dialog began to bring together Missouri and federal agencies to discuss how to transition the sand and gravel issues from Missouri to the Corps.

**March 1994** The first meeting was held with stakeholders to discuss the issues of stream protection and how to develop guidelines.

**December 5, 1994** The agencies, the public and the industry held a stakeholder meeting to lay out all sides of the issue of stream protection and mining guidelines. The group formulates what were called Best Management Practices or stream protection guidelines.

**March 3, 1995** The Corps issued the general 404 permit commonly called the GP34. This permit contained all the stream protection guidelines discussed with stakeholders, and are the same guidelines being discussed in 2002.

**April 10, 1995** The final meeting with all stakeholders was held to refine the stream protection guidelines and how they will be used by the Corps in the general permit.

**January 1997** The U.S. District Court of the District of Columbia reached a decision that certain aspects (but not all of aspects) of the Tulloch Rule were invalid. This suit was brought by the American Mining Congress and withdrew regulation of the 'incidental fallback' that occurred in excavation activities.

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**April 1997** The U.S. Army Corps of Engineers (CE) issued guidance concerning the American Mining Congress vs. U.S. Army Corps of Engineers decision. The CE no longer would issue a permit where the only discharge was 'incidental fallback' material. The CE continued to regulate any discharge that was the result of mechanized landclearing, ditching, channelization, etc., involving discharges of dredged or fill material greater in amount than or different in kind from the minimal, 'incidental fallback' discharges addressed by and defined by the Court decision. The pushing and movement and redeposit of substantial amounts of soil (or gravel) from one place to another (temporarily or permanently) within a water of the United States, requires a permit from the CE.

**January 1999** The Missouri Department of Natural Resources begins to regulate commercial sand and gravel mining again. The Missouri permit was once again at a fee of \$100 for small operators, who had been getting a Corps permit for free.

**February 1999** The Government decided not to appeal the U.S. District Court for the District of Columbia decision (American Mining Congress vs. U.S. Army Corps of Engineers). The discharge of dredged and fill material that was only 'incidental fallback' off the edge of an excavation bucket, would no longer be regulated. Specific discharges of material within the streambed such as pushing of gravel into temporary piles, construction of water diversion berms, constructing haul roads, and sidecasting overburden material in the streambed would continue to be regulated.

**March 2000** The Land Reclamation Commission asks the staff of the program to begin looking at bringing stream protection guidelines into the current state permitting process.

**March 2001** The Land Reclamation Commission directs the staff to prepare rules that will incorporate stream protection guidelines into the Commission mining regulations.

**July 2001** House Bill 453 was signed by the Governor which amended the Land Reclamation Act. The only change to sand and gravel in this legislation was to set fees for small operators at \$300. No other changes in the legislation applied to small sand and gravel operators.

**September 2001** The stream protection proposed rules are published in the Missouri Register as the same guidelines developed in 1995 and used by all operators during that time period. Because of the number of objections to this, the rules were terminated and plans were made to host public meetings on this issue.

**December 2001** Three public meetings were held in Rolla, Springfield and Poplar Bluff to receive public comments about the proposed guidelines.

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**January 2002** One additional meeting was held in Columbia and a formal hearing was held before the Land Reclamation Commission in Jefferson City. The Land Reclamation Commission committed to consider all comments prior to making any further determinations about stream protection guidelines. Basically, there were two distinct and opposing views expressed about stream protection rules. The local governments and the operators are opposed and environmental groups are in favor of the proposed rules. Landowners were divided based on past experiences on the issue.

**July 2002** The Land Reclamation Commission directs the staff to institute a workgroup with representatives from all interested parties. The commission asked that this workgroup recommend proposed rules that everyone can support by the end of the calendar year. Members of the group include landowners, mining companies, county commissions, industry groups, and environmental groups. The purpose of the proposed rules is to provide protection for streams in response to sand and gravel mining.

**September 2002** The first workgroup meeting was held on September 9th of this year. About 35 people attended the first workgroup meeting. A lot of frustration was expressed by some industry and landowner rights representatives about the need for and the inequity of the proposed rules.

**October 2002** About 40 people attended the second workgroup meeting on October 22nd. The second meeting was to be spent looking at proposed language for the new rules. However the time was spent addressing the concerns of whether or not rules were even needed and whether or not the department has the authority to promulgate stream protection rules under the Land Reclamation Act. There were no resolutions reached. The industry representatives offered to draft proposed language for the next meeting.

**November 2002** About 40 people attended the third workgroup meeting on November 12th. Much of the third meeting was again spent in addressing concerns of the workgroup members. However the group did begin to make progress on the existing proposal and all the members were asked to come back in December with suggested language that would satisfy their concerns. The industry proposal came too late in the day to finalize in the third meeting.

**December 2002** At this final meeting, about 40 people attended the workgroup meeting on December 10th. The workgroup was able to work through all the points of the proposed stream protection rule. Each point had up to three options that members supported, so consensus did not reach a single document to deliver to the commission. However, the commission will have a document that clearly lays out the opposing wishes of the diverse workgroup members.

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**January 2003**

The final workgroup recommendation will be presented to the Land Reclamation Commission for their consideration. The Commission is not expected to make a final decision at this meeting. After their consideration the Commission will more likely make a final decision at the March or May meetings later this year. The proposed rule will not enter the formal rulemaking process until the Commission has made their decision.